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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.198 OF 2007
IN
NOTICE OF MOTION NO.878 OF 2007
IN
L.C.SUIT NO.894 OF 2007

Mohammed Papa Tamboli ... Appellant
versus
The MCGB and another ... Respondents

Mrs.Subha A. Dhamale for appellant.

Ms.Geeta Jogalekar for MCGB.

CORAM : A.S.OKA, J.

DATE : 15th March 2007

PC :

1. Heard learned advocates appearing for the parties. The appellant is the original plaintiff who filed a suit for challenging a notice under section 314 of the Mumbai Municipal Corporation Act, 1888 issued by the respondents. It is an admitted position that within 48 hours of the receipt of the said notice, the appellant filed a reply to the notice. The learned advocate for the respondents, on instructions, states that the said reply is under consideration of the

concerned officer of the first respondent Corporation and appropriate order will be passed after considering the said reply within a period of 15 days from today.

2. In view of the aforesaid statement, this appeal can be disposed of by directing that the respondents will pass an order after considering the reply within a period of 15 days from today and will communicate the said order to the appellant within a period of one week from the date of passing the order. A limited protection can be granted to the appellant for a period of four weeks from today.

3. The learned advocate for the appellant stated that if limited protection as aforesaid is granted, the appellant will withdraw the suit filed in the Trial Court with liberty to file a fresh suit in case the order passed by the respondents is adverse to the appellant. Hence, I pass the following order.

4. Order :-

(a) The concerned officer of the respondents will pass an order after considering the reply filed

by the appellant to the notice issued under section 314 of the said Act of 1888 within a period of fifteen days from today. The order passed will be communicated to the appellant within a period of one week from the date of passing of the order;

(b) For a period of four weeks from today, both the parties will maintain status-quo as of today in respect of the suit structure;

(c) On the prayer made by the advocate for the appellant, the L.C.Suit No.894 of 2007 is dismissed as withdrawn with liberty to file a fresh suit in case order passed by the respondents is adverse to the appellant;

(d) The Trial Court will pass a formal order on the suit in the aforesaid terms on production of an authenticated copy of this order;

(e) The appeal is disposed of in above terms with no order as to costs;

(f) All contentions of the parties are expressly kept open;

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(g) All concerned to act on an ordinary copy of this order duly authenticated by Registry of this Court.

5. In view of disposal of the Appeal from Order No.198 of 2007, Civil Application No.292 of 2007 does not survive and stands dismissed as such.

(A.S.OKA, J.)